

Message Text

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FM SECSTATE WASHDC

TO AMEMBASSY LUXEMBOURG PRIORITY

UNCLAS STATE 103187

E.O.: 11652 N/A

TAGS: ETRD, LU

SUBJECT: CIVIL AVIATION, RECIPROCAL EXEMPTION FROM CUSTOMS
DUTIES AND TAXES ON AIRCRAFT SUPPLIES

1. CARGOLUX AIRLINES INTERNATIONAL IS SEEKING EXEMPTION
FROM PAYMENT OF U.S. CUSTOMS DUTIES AND INTERNAL REVENUE
TAXES ON SUPPLIES, PARTICULARLY AVIATION FUEL. UNITED
STATES LAW PERMITS SUCH EXEMPTION ON CONDITION OF RECI-
PROCITY.

2. SECTIONS 309 AND 317 OF THE TARIFF ACT OF 1930, AS
AMENDED, PROVIDE THAT AIRCRAFT OF FOREIGN REGISTRY MAY RE-
CEIVE EXEMPTION FROM PAYMENT OF UNITED STATES CUSTOMS DUTIES,
AND INTERNAL REVENUE TAXES IMPOSED BY REASON OF IMPORTATION,
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ON SUPPLIES IMPORTED FOR USE IN THEIR INTERNATIONAL OPERA-
TIONS TO AND FROM THE UNITED STATES. EXEMPTION IS GRANTED
ON THE BASIS OF A FINDING BY THE SECRETARY OF COMMERCE THAT

THE FOREIGN COUNTRY IN QUESTION ACCORDS "SUBSTANTIALLY RECIPROCAL PRIVILEGES" TO AIRCRAFT OF UNITED STATES REGISTRY- AIRCRAFT SUPPLIES INCLUDE FUELS AND LUBRICANTS, COMMISSARY AND OTHER CONSUMABLE SUPPLIES AND GROUND EQUIPMENT.

3. SECTION 4221 OF THE INTERNAL REVENUE CODE CONTAINS A PROVISION, SIMILAR IN ALL MATERIAL RESPECTS TO SECTION 309 OF THE TARIFF ACT, WHICH EXEMPTS FOREIGN AIRCRAFT FROM PAYMENT OF INTERNAL REVENUE TAXES ON AIRCRAFT SUPPLIES, EXCEPT

GROUND EQUIPMENT, PROCURED IN THE UNITED STATES DOMESTIC MARKET FOR USE IN THEIR OPERATIONS TO AND FROM THE UNITED STATES. SIMILARLY, THIS EXEMPTION IS CONTINGENT ON A FINDING BY THE SECRETARY OF COMMERCE THAT THE FOREIGN COUNTRY IN QUESTION GRANTS "SUBSTANTIALLY RECIPROCAL PRIVILEGES" TO UNITED STATES AIRCRAFT.

4. THE EMBASSY IS REQUESTED TO FORWARD ANY INFORMATION AVAILABLE ON CARGO LUX AIRLINES INTERNATIONAL. WE HAVE NO RECORD OF THE AIRLINE EVER ENTERING THE UNITED STATES.

5. NO U.S. FLAG CARRIER IS CURRENTLY REGULARLY SERVING LUXEMBOURG. HOWEVER, IN ORDER TO AFFORD A BASIS FOR AN OFFICIAL FINDING OF RECIPROCITY BY USG WITH RESPECT TO LUXEMBOURG, SOME FORM OF OFFICIAL INDICATION IS REQUIRED FROM GOL TO EFFECT THAT ITS LAWS OR REGULATIONS ALLOW OR WILL ALLOW APPROPRIATE EXEMPTIONS TO SUPPLIES FOR U.S. (AND PRESUMABLY OTHER) FOREIGN AIRCRAFT WHEN AND IF SUCH AIRCRAFT SERVE LUXEMBOURG. CITATION TO RELEVANT STATUTES OR REGULATIONS WOULD BE DESIRABLE, IF READILY AVAILABLE.

6. IT SHOULD BE NOTED THAT US LAW PROVIDES THAT EXEMPTIONS CAN BE MADE IN A CASE WHERE THE FOREIGN GOVERNMENT GRANTS OR WOULD GRANT "SUBSTANTIALLY RECIPROCAL" PRIVILEGES. THAT IS, POLICY OF THE FOREIGN GOVERNMENT MUST BE KNOWN BEFORE THE USG CAN MAKE A FINDING THAT A RECIPROCAL SITUATION EXISTS. KISSINGER
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